132-337

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~1426.~~ 1034

THE UNITED STATES, APPELLANT,

vs.

HENRY SCHOFIELD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED OCTOBER 27, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1426.

THE UNITED STATES, APPELLANT,

vs.

HENRY SCHOFIELD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States for the district of Maryland, begun and held at the court-house in the city of Baltimore on the first Tuesday in September, being the sixth day of the same month, in the year of our Lord one thousand eight hundred and eighty-seven.

Present, the honorable Thomas I. Morris, judge Maryland district; Thomas G. Hayes, esquire, attorney; George H. Cairnes, esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

HENRY SCHOFIELD
vs.
THE UNITED STATES.

Petition under the act of March 3d, 1877, chapter 359.—Filed 20th August, 1887.

In the U. S. district court, district of Maryland. Court of Claims side.

HENRY SCHOFIELD
vs.
THE UNITED STATES.

To the honorable Thomas I. Morris, judge of said court:

2 Your petitioner, Henry Schofield, by John E. Bennett, jr., his attorney, respectfully shows to your honor:

1. That he is a resident of Baltimore City and was duly qualified and appointed by the circuit court, in accordance with S. 2012 of the Revised Statutes of the United States, to serve as a supervisor of registration and election prior and during the Congressional election of 1886, and herewith he prays that as evidence of such the books of the chief supervisor of elections may be produced wherein is subscribed his oath of appointment.

2. That he faithfully and diligently performed his duties, served all required time in the capacity of the supervisor as aforesaid, and that he was thereupon entitled, under S. 2031 of the Revised Statutes of the U. S., to wages at a rate of $5.00 per day to the extent of ten days.

3. That the United States has refused to pay him his wages as provided by its said laws, and has paid him none but twenty-five dollars, in evidence of which he prays that there may be produced before your honor the receipt he signed for the money so paid, and the duplicate warrant issued by the chief supervisor for his full pay of $50.00 now in the hands of the marshall of this court.

That all and several, the matters and facts herein contained, are
3 true and within the jurisdiction of this honorable court.

To the end, therefore, that your honor may render judgment against the United States Government for the balance due your petitioner, being the sum of $25.00 as aforesaid.

And as in duty bound, etc.

JOHN E. BENNETT,
Attorney for Petitioner.

Sworn to before me this 20th day of August by Henry Schofield.

JAS. W. CHEW,
Clerk Dist. C. U. S.

10701

Affidavit of service of copy of said petition on United States district attorney for Maryland.—Filed 13th September, 1887.

OFFICE U. S. MARSHAL,
DISTRICT OF MARYLAND,
Baltimore, Sep. 13th, 1887.

Be it remembered, and it is hereby certified, that on the 13th day of September, 1887, before me, Jas. W. Chew, clerk of the U. S. courts, district of Maryland, personally appeared William M. Isaac, who made oath on the Holy Evangely of Almighty God that he served on Thomas G. Hayes, att'y for the United States, district of Maryland, on 13th day of September, 1887, a copy of the petition of Henry Schofield, claiming additional compensation for his services as a supervisor of elections, Congressional election of 1886; that said service was made by him in
4 his capacity as deputy U. S. marshal.

W. M. ISAAC.
JAS. W. CHEW,
Clk U. S. Courts.

Answer to petition.—Filed 16th September, 1887.

In the district court of the United States.

HENRY SCHOFIELD
vs.
THE UNITED STATES.

To the honorable Thomas I. Morris, judge of said court:

The answer of the United States, by Thomas G. Hayes, its attorney, to the petition filed in the above cause, respectfully states:

1. That the United States admits the matter and things averred in the first paragraph of the said petition.

2. That the United States admits that the said petitioner faithfully and diligently performed the service as set forth in the second paragraph of said petition, and further admits that the petitioner was entitled to be paid wages at the rate of $5.00 per day, but not for the length of time claimed by said petitioner, for the reason set forth in the succeeding paragraph of this answer.

5 3. That the United States admits the facts averred in the third paragraph of said petition, except the averment that the said $50 was in the hands of the marshal, but says that the said petitioner was only entitled to the amount he received, to wit, $25.00, because by a circular letter received by the marshal from the honorable Attorney-General of the United States, dated October 15th, 1886, the said marshal was ordered to pay only for five days' service. The words of said circular letter so ordering the marshal were as follows:

"It is not expected that supervisors and deputy marshals will receive compensation fore more than five days' services, and they should be so informed; within this time all can be done, it is thought, that ought to be."

And the United States prays that said petition may be dismissed with costs.

And as in duty bound, &c.

THOMAS G. HAYES,
U. S. Dist. Attorney.

Affidavit of service of copy petition on the Attorney-General of the United States.—Filed 19th September, 1887.

THE UNITED STATES OF AMERICA,
Dist. of Maryland, ss:

6 Before me, George Morris Bond, a commissioner of the United States for the fourth circuit in and for the Maryland district, personally appeared John E. Bennett, jr., this twenty-fifth day of August, eighteen hundred and eighty-seven, and made oath in due form of law that he is the attorney of record of Henry Schofield in the case of Henry Schofield vs. The United States, and that he did on the twenty-third day of August, 1887, send by registered letter to the Attorney-General of the United States a copy of the petition filed in that case, and subscribes his name hereto.

JOHN E. BENNETT, Jr.

Sworn to and subscribed before me, this 25th day of August, 1887.
[COMMR'S SEAL.] GEORGE MORRIS BOND,
United States Commissioner for Maryland.

Demurrer to answer.—Filed 19th September, 1887.

In the U. S. dist. court., dist. of Maryland, court of claimes side.

HENRY SCHOFIELD
vs.
THE UNITED STATES.

The plaintiff in the above entitled cause demurs to the answer of the defendant, for that the said answer doth not disclose a good defence in law.

JOHN E. BENNETT, Jr.,
Att'y for Plaintiff.

7 4th October, 1887, the United States, by its attorney, joins issue on the demurrer.

Opinion and judgment of the court.—Filed 6th October, 1887.

In the district court of the United States for the district of Maryland.

HENRY SCHOFIELD
vs.
THE UNITED STATES OF AMERICA.

The plaintiff has brought this case against the United States in the U. S. district court for the Maryland district by filing his petition in accordance with the act of Congress of March 3, 1887, chapter 359, by which jurisdiction in cases against the United States is given to the court where the amount of the claim does not exceed $1,000, and the claim is founded upon the Constitution and laws of the United States (except pensions) or upon any regulation of an Executive Department, or upon any contract,

expressed or implied, with the Government of the United States, or for damages liquidated or unliquidated in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty if the United States were suable.

8 The plaintiff's petition has been duly served upon the district attorney of this district and upon the Attorney-General of the United States, as required by the act of Congress.

The plaintiff alleges that there is due to him by the United States the sum of twenty-five dollars for the balance of his compensation as a supervisor of registration and election prior to and during the Congressional election of 1886 in the city of Baltimore, he having faithfully and diligently performed his duties, and being entitled to $5 per day for ten days, and having been paid only twenty-five dollars, payment of the balance claimed by him having been refused.

The answer of the United States admits that the plaintiff has performed the service claimed for in his petition, but denies that he is entitled to receive more than the $25 already paid to him, for the reason that by a circular letter addressed by the Attorney-General of the United States to the marshal of this district, dated the 15th Oct., 1886, the marshal was directed to notify the supervisors that they would only receive twenty-five dollars.

The plaintiff has demurred to the answer of the United States, and joinder in demurrer has been entered.

FINDINGS OF FACT.

9 1. I find that the petitioner was duly appointed and commissioned supervisor of elections for the Ninth ward of Baltimore City, in the State of Maryland, by the circuit court of the United States on the 4th September, 1886, in pursuance of sections 2011 & 2012 of the United States Revised Statutes and *and* the supplements and amendments thereto, and that he duly qualified and entered upon his duties.

2. I find that the laws of Maryland governing registration for Congressional and other elections in the city of Baltimore requires the officers of registration, for the purpose of correcting the lists of qualified voters, shall sit with open doors in the several wards of the city from 9 a. m. to 9 p. m. for fifteen successive days commencing on the first Monday of September; and afterwards, for the purpose of revising the said lists, for three successive days, commencing on the first Monday of October.

3. I find that the petitioner, in pursuance of his said appointment and of the provisions of section 2016 of the Revised Statutes, which authorized and required him to attend at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for a Representative or Delegate in Congress, and to personally inspect and scrutinize such registration, did attend the said registration in the said ward for which he was appointed for fifteen days in September,

10 1886, and for three days in October, 1886, being October 4th, 5th, and 6th, in said year.

4th. I find that the U. S. marshal for this district on the 16th October, 1886, received from the Attorney-General of the U. S. a circular

letter in which he notified the marshal that, "It is not expected that supervisors and deputy marshals will receive compensation for more than five days' services, and they should be so informed. Within this time all can be done, it is thought, that ought to be."

5. I find that the plaintiff was on duty and had performed eighteen days of proper and necessary service as supervisor before the circular letter of the Attorney-General relied upon in the answer of the United States had been issued.

CONCLUSION.

Section 2031 of the Revised Statutes provides: "And there shall be allowed and paid to each supervisor of elections * * * who is appointed and performs his duty under the preceeding provisions, compensation at the rate of five dollars per day for each day he is actually on duty not exceeding ten days."

Under this law the plaintiff earned and is entitled to fifty dollars compensation, and having received but twenty-five dollars, I sustain
11 the demurrer, and I do give judgment in favor of the plaintiff against the United States for the sum of twenty-five dollars, with costs to the plaintiff, being the fees paid by him to the clerk of the court, amounting to $2.55.

THOS. I. MORRIS,
U. S. District Judge for the Dt. of Md.

Therefore it is considered by the court here that the said plaintiff recover against the said defendant, as well the said sum of twenty-five dollars for his damages, as the sum of two dollars and fifty-five cents, adjudged by the court here unto the said plaintiff for his costs and charges in this behalf expended.

Memorandum.—Judgment was rendered in this case on the 6th October, 1887.

Application and notice of appeal to the Supreme Court of the United States by the United States.—Filed 16th January, 1888.

In the district court of the United States for the district of Maryland.
December term, A. D. 1887.

HENRY SCHOFIELD
vs.
THE UNITED STATES.

From the judgment rendered in the above-entitled cause, on the 6th October, A. D. 1887, in favor of the plaintiff, the defendants, by Thomas G. Hayes, United States district attorney, on the 16th day of January, A. D. 1888, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

THOMAS G. HAYES,
U. S. District Attorney.

12 In the district court of the United States.

HENRY SCHOFIELD
vs.
THE UNITED STATES.

To the honorable Thos. I. Morris, judge of said court:

Your petitioner, Henry Schofield, by H. Arthur Stump, his attorney, prays the court that a docket fee of ten dollars be allowed the att'y in the judgment in this case against the United States.

H. ARTHUR STUMP, *Att'y.*

The motion and prayers of the plaintiff in the above-entitled case, that there be taxed as part of the costs for which he is awarded judgment against the United States, a docket fee of ten dollars to his attorney, as refused and denied, the court considering that it has no power to allow a docket fee to the attorney, for the reason that section 15 of the act of March 3d, 1887, empowers the court to allow to the prevailing party as costs, only the costs actually incurred for witnesses and summoning the same, and fees paid to the clerk of the court.

THOS. I. MORRIS, *Judge.*

Oct. 5th, 1888.

The petitioner, by H. Arthur Stump, his attorney, prays an appeal to the Supreme Court of the United States from the above order refusing to grant the petitioner for a docket fee of ten dollars to be taxed as part of the costs in the judgment against the United States, in the above case.

H. ARTHUR STUMP, *Attorney.*

13 And thereupon it is ordered by the court that a transcript of the record and proceedings of said judgment, together with all things relating thereto, be transmitted to the Supreme Court of the United States, to be held on the second Monday of October next. And the same is transmitted accordingly.

DISTRICT OF MARYLAND, *to wit:*

I, James W. Chew, clerk of the district court of the United States for the district of Maryland, do certify that the foregoing is a true record of the proceedings of the said court in the therein-entitled cause.

In testimony whereof I hereto set my hand and affix the seal of said district court this 5th day of October, A. D. 1888.

[SEAL.] JAS. W. CHEW, *Clk.*

(Indorsement on cover:) No. 1426. The United States, appellant, vs. Henry Schofield, Maryland D. C. U. S. Filed October 27, 1888.

○

Office Supreme Court U. S.
FILED.
APR 15 1889
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES, APPELLANT,
vs.
HENRY SCHOFIELD. } No. 1426.

THE UNITED STATES, APPELLANT,
vs.
TYLER DAVIS. } No. 1425.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES, APPELLANT, *vs.* HENRY SCHOFIELD. } No. 1426.

THE UNITED STATES, APPELLANT, *vs.* TYLER DAVIS. } No. 1425.

STATEMENT OF THE CASE.

The statement filed by appellee is correct as to the facts in this case.

The appellant asks leave to file herewith, for consideration of the court, the statute of March 3, 1887.

The jurisdiction of the district courts of the United States is dependent upon the jurisdiction of the Court of Claims, defined in the first section of that act, to wit:

> All claims founded upon the Constitution of the United States or any law of Congress except for pensions, or upon any regulation of an Executive Department of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort,

in respect to which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to either of the courts herein mentioned jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims, which have hertofore been rejected, or reported on adversely by any court, Department, or commission authorized to hear and determine the same. * * *

* * * Section second. That the district courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the circuit courts of the United States shall have such concurrent jurisdiction in all cases where the amount of such claim exceeds one thousand dollars and does not exceed ten thousand dollars. All causes brought and tried under the provisions of this act shall be tried by the court without a jury.

Your attention is also requested to the ninth section of the act:

That the plaintiff or the United States, in any suit brought under the provisions of this act shall have the same rights of appeal or writ of error as are now reserved in the statutes of the United States in that behalf made, and upon the conditions and limitations therein contained. The modes of procedure in claiming and perfecting an appeal or writ of error shall conform in all respects, and as near as may be, to the statutes and rules of court governing appeals and writs of error in like causes.

This statute has provided, therefore, that the United States shall have the same rights of appeal as were before reserved in statutes of the United States. The statutes organizing the Court of Claims, the only court theretofore in which the United States could be made defendant, had provided that an appeal might be taken by the United States from any judgment, irrespective of the amount involved. The position of the defendant in this case is, that by the provisions of the ninth section of this statute that right was reserved to the Government.

Having stated this proposition, the Attorney-General asks leave to submit the case.

A copy of the statute is hereto annexed.

ROBERT A. HOWARD,
Assistant Attorney-General.

CHAP. 359. An act to provide for the bringing of suits against the Government of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable: *Provided, however*, That nothing in this section shall be construed as

giving to either of the courts herein mentioned jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims which have heretofore been rejected, or reported on adversely by any court, Department, or commission authorized by law to hear and determine the same.

Second. All set-offs, counter claims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided*, That no suit against the Government of the United States shall be allowed under this act unless the same shall have been brought within six years after the right accrued for which the claim is made.

SEC. 2. That the district courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the circuit courts of the United States shall have such concurrent jurisdiction in all cases where the amount of such claim exceeds one thousand dollars and does not exceed ten thousand dollars. All causes brought and tried under the provisions of this act shall be tried by the court without a jury.

SEC. 3. That whenever any person shall present his petition to the Court of Claims alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer, or agent, or contractor so indebted, or that he, or the person for whom he is such surety, guarantor, or personal representative, has held any office or agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States has arisen and exists, and that he or the person he represents has applied to the

proper department of the Government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said department and to the Attorney-General of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney-General shall represent the United States at the hearing of said cause. The court may postpone the same from time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United States against such principal, or surety, or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court. Unless suit shall be brought within said time, such claim and the claim on the original indebtedness shall be forever barred.

SEC. 4. That the jurisdiction of the respective courts of the United States proceeding under this act, including the right of exception and appeal, shall be governed by the law now in force, in so far as the same is applicable and not inconsistent with the provisions of this act; and the course of procedure shall be in accordance with the established rules of said respective courts, and of such additions and modifications thereof as said courts may adopt.

SEC. 5. That the plaintiff in any suit brought under the provisions of the second section of this act shall file a petition, duly verified, with the clerk of the respective court having jurisdiction of the case, and in the district

where the plaintiff resides. Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, and a succinct statement of the facts upon which the claim is based, the money or any other thing claimed, or the damages sought to be recovered, and praying the court for a judgment or decree upon the facts and law.

SEC. 6. That the plaintiff shall cause a copy of his petition filed under the preceding section to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail a copy of the same, by registered letter, to the Attorney-General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case, to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: *Provided,* That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court.

SEC. 7. That it shall be the duty of the court to cause a written opinion to be filed in the cause, setting forth the specific findings by the court of the facts therein and the conclusions of the court upon all questions of law involved in the case, and to render judgment thereon. If the suit

be in equity or admiralty the court shall proceed with the same according to the rules of such courts.

SEC. 8. That in the trial of any suit brought under any of the provisions of this act no person shall be excluded as a witness because he is a party to or interested in said suit; and any plaintiff or party in interest may be examined as a witness on the part of the Government.

Section ten hundred and seventy-nine of the Revised Statutes is hereby repealed. The provisions of section ten hundred and eighty of the Revised Statutes shall apply to cases under this act.

SEC. 9. That the plaintiff or the United States in any suit brought under the provisions of this act shall have the same rights of appeal or writ of error as are now reserved in the statutes of the United States in that behalf made, and upon the conditions and limitations therein contained. The modes of procedure in claiming and perfecting an appeal or writ of error shall conform in all respects, and as near as may be, to the statutes and rules of court governing appeals and writs of error in like causes.

SEC. 10. That when the findings of fact and the law applicable thereto have been filed in any case as provided in section six of this act, and the judgment or decree is adverse to the Government, it shall be the duty of the district attorney to transmit to the Attorney-General of the United States certified copies of all the papers filed in the cause, with a transcript of the testimony taken, the written findings of the court, and his written opinion as to the same; whereupon the Attorney-General shall determine and direct whether an appeal or writ of error shall be taken or not; and when so directed the district attorney shall cause an appeal or writ of error to be perfected in accordance with the terms of the statutes and rules of practice governing the same: *Provided*, That no appeal or writ of error shall be allowed after six months from the judgment or decree in such suit. From the date of such final judgment or decree interest shall be

computed thereon, at the rate of four per centum per annum, until the time when an appropriation is made for the payment of the judgment or decree.

SEC. 11. That the Attorney-General shall report to Congress, and at the beginning of each session of Congress, the suits under this act in which final judgment or decree has been rendered, giving the date of each, and a statement of the costs taxed in each case.

SEC. 12. That when any claim or matter may be pending in any of the Executive Departments which involves controverted questions of fact or law, the head of such Department, with the consent of the claimant, may transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said Court of Claims, and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the Department by which it was transmitted.

SEC. 13. That in every case which shall come before the Court of Claims, or is now pending therein, under the provisions of an act entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," approved March third, eighteen hundred and eighty-three, if it shall appear to the satisfaction of the court, upon the facts established, that it has jurisdiction to render judgment or decree thereon under existing laws or under the provisions of this act, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and report its proceedings therein to either House of Congress or to the Department by which the same was referred to said court.

SEC. 14. That whenever any bill, except for a pension, shall be pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may refer the

same to the Court of Claims, who shall proceed with the same in accordance with the provisions of the act approved March third, eighteen hundred and eighty-three, entitled an "Act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitations should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

SEC. 15. If the Government of the United States shall put in issue the right of the plaintiff to recover the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnessess, and for summoning the same, and fees paid to the clerk of the court.

SEC. 16. That all laws and parts of laws inconsistent with this act are hereby repealed.

Approved, March 3, 1887.

21691——2

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

THE UNITED STATES, APPELLANT,
vs.
HENRY SCHOFIELD, APPELLEE.
No. ~~1426.~~ 1034.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

BRIEF OF APPELLANT.

STATEMENT OF CASE.

This case came before the court at the October term, 1888, on a motion to dismiss the appeal. This motion having been decided adversely to the appellee (131 U. S. Report, 36), comes before the court for decision upon the merits.

Henry Schofield was duly appointed and commissioned a supervisor of elections for the Ninth ward of the city of Baltimore, in the State of Maryland, by the circuit court of the United States, September 4, 1886, in pursuance of sections 2011 and 2012 of the Revised Statutes of the United States. The laws of Maryland gov-

erning registration for Congressional and other elections in the city of Baltimore require the officers of registration, for the purpose of correcting the lists of qualified voters, to sit with open doors in the several wards of the city from 9 a. m. to 9 p. m. for fifteen successive days, commencing on the first Monday of September; and afterwards, for the purpose of revising the said lists, for three successive days, commencing on the first Monday of October. In pursuance of his said appointment and of the provisions of section 2016 of the Revised Statutes, which authorized and required him to attend at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for a Representative or Delegate in Congress, and to personally inspect and scrutinize such registration, he attended the said registration in the said ward for which he was appointed for fifteen days in September, 1886, and for three days in October, 1886, being October 4, 5, and 6 in said year. Plaintiff received from the defendant the sum of $25.

This suit is brought to recover the sum of $25, being the difference between five days' services allowed and paid and ten days' services claimed. To this claim defendant answered that on the 16th day of October, 1886, the United States marshal for that district received from the Attorney-General of the United States notification "that it is not expected that supervisors and deputy marshals will receive compensation for more than five days' services, and they should be so informed. Within this time all can be done, it is thought, that ought to be."

The words in quotation are part of a circular letter issued by the Attorney-General of the United States, in

accordance with instructions from the President, contained in a letter, of which the following is a copy:

EXECUTIVE MANSION,
Washington, Oct. 5, 1886.

Hon. A. H. GARLAND,
Attorney-General:

DEAR SIR: You are hereby requested to take general charge and direction of the execution of the statutes of the United States touching the appointments of supervisors of election and special deputy marshals, and the performance of their duties and their compensation, so far as these subjects are, by the Constitution and laws, under the supervision and control of the executive branch of the Government.

Yours truly,

GROVER CLEVELAND.

The circular letter is as follows:

DEPARTMENT OF JUSTICE,
Washington, D. C., October 15, 1886.

To ——— ———,
United States Marshal,
———— ————:

SIR: In pursuance of a letter of the 5th instant from the President, directing the Attorney-General to take charge of the "appointment of special deputy marshals" "the performance of their duties and their compensation," together with "the compensation of supervisors," at the Congressional election in November next, your attention is directed to the provisions of titles 24 and 26, chapter 7, title 70, of the Revised Statutes. Under section 2022 and 2024, R. S., you have power to keep the peace, protect supervisors, preserve order, prevent frauds, and enforce the law, in towns of twenty thousand inhabitants and upwards.

You should make yourself familiar with the statutes referred to, and see that they are understood by your deputies, who should be discreet men, impressed with the importance of an honest franchise.

The manner of discharging these duties by yourself and your deputies is largely left to your discretion. In matters involving questions of law, you are directed to consult the attorney of the United States for your district, for immediate information and advice. It is assumed that the duties can be performed without infringing upon the rights of any citizen, in a manner that shall be firm and at the same time free from an unnecessary display of authority.

It is not expected that supervisors and deputy marshals will receive compensation for more than five days' services, and they should be so informed. Within this time all can be done, it is thought, that ought to be. You need vigilant men who are conscientious workers, and no others.

Before payment, each deputy and supervisor will present to you his commission, oath, and badge of office, with an affidavit that he is the person to whom the commission was issued, that he performed the days' services as charged, which will be annexed by you to the pay-roll as vouchers for its adjustment. The same facts should also be known to you through other means.

Upon payment being completed, these accounts should be approved by the court and forwarded to to this Department for action under the executive order mentioned.

Very respectfully,

A. H. GARLAND,
Attorney-General.

No other is suggested, unless the foregoing constitutes a defense.

BRIEF OF ARGUMENT.

Two questions are involved:

(1) Has the President authority in any event to regulate the service and compensation of a supervisor of election?

(2) The service having been fully performed ten days before the circular letter was received by the marshal, is it applicable as a defense in this case, admitting that authority exisited on the part of the President to regulate the length of services and compensation of a supervisor of election.

Perhaps no better exposition of the affirmative of these two propositions can be made than that of the learned Attorney-General who caused the circular letter to be issued. The following instructions to enter a defense on the part of the Government state the reason and force of the circular:

> "You are instructed to enter defense that under the instructions of the President to the Attorney-General no payments could be allowed beyond the maximum of five days stated in the circular.
>
> By reference to the provisions of Titles 24 and 26 of the Revised Statutes you will see that before October 5, 1886, there was no department authorized by law to make compensation for such services; that there is in the statutes no authority conferred upon a court to superintend the services of a supervisor or to direct what days he shall serve; that there is nothing in the statutes which authorizes a chief supervisor of election to determine the number of days of necessary service of a supervisor; that without such authority in the power of the court or a chief supervisor, the duration of service and the impor-

tance thereof must depend upon the discretion of the supervisor, or upon that of an officer in charge of the administration of the law; that it is not the spirit of the law to allow a servant of the Government to fix the time and manner of his services even within a given maximum; that in the discharge of such duties there must somewhere be found a legal responsibility and supervision; that ordinarily the time and expense are consonant with the spirit of the law when supervised and paid by a disbursing officer; that a disbursing officer can not be responsible for the irregular and interested services of an official without control or restraint; that the provision of Article II, section 3 of the Constitution, directing the President to "take care that the laws be faithfully executed," made the President the supervising officer and legal agent until an officer was designated; that the Executive order, under the provision mentioned, designated the Attorney-General; that thereupon the control over supervisors was given to the Attorney-General with the discretion given to the Executive to "care that the laws be faithfully executed;" that such mandate committed the matter to the discretion of the supervising power; that in the exercise of official discretion compensation for a maximum of five days was fixed with Executive sanction; that the appointment of a supervisor by the court has the color of a contract it is true, but of an inchoate contract, only complete when the services are approved by the other contracting party, who was the Executive prior to the appointment of the Attorney-General, and the latter subsequently; that the executive mandate of the Constitution controlled the services of supervisors prior, and the Attorney-General all services subsequent, to October 5, 1886; that no other person or officer was clothed with power in the matter; that it being contrary to the spirit of the law for a subordinate to con-

tinue and control his own services in such a manner as he shall think just and necessary for the execution of the law, he must be subject to the Constitution and duly-appointed powers; and therefore the action of the Executive and the Attorney-General in the matter is final and conclusive."

We deem it fair to the court to say that the same questions have been passed upon by Federal courts in two instances, in each of which the conclusion reached is that the President had no authority to regulate the length of service and compensation in these matters.

Vide, *Stockdale, supervisor of election*, vs. *The United States*, 39 Federal Reporter, 61; *Berry* vs. *The United States*, 35 Federal Reporter, 269.

JOHN B. COTTON,
Assistant Attorney-General.

○

IN THE

Supreme Court of the U[illegible]

OCTOBER TERM, [illegible]

No. 1051.

THE UNITED STATES

vs.

HENRY SCHOFIELD, [illegible]

APPEAL FROM THE DISTRICT COURT
OF THE STATES FOR THE DISTRICT OF [illegible]

BRIEF FOR APPELLEE.

CHARLES C. [illegible]

JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES, Appellant,

vs.

HENRY SCHOFIELD, Appellee.

MOTION TO DISMISS APPEAL.

CHARLES C. LANCASTER,

Counsel for Appellee.

Beresford, Printer,
Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES, *Appellant*,
vs.
HENRY SCHOFIELD, *Appellee.*
} No. 1,426.

Appeal from the District Court of the United States for the District of Maryland.

EXTRACT FROM TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a District Court of the United States for the district of Maryland, begun and held at the court house in the city of Baltimore on the first Tuesday of September, being the sixth day of the same month, in the year of our Lord one thousand eight hundred and eighty-seven. Present, the honorable Thomas I. Morris, judge Maryland district; Thomas G. Hayes, Esq., attorney; George H. Cairnes, Esq., marshal; James W. Chew, clerk.

Among others were the following proceedings, to wit:

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF MARYLAND.

HENRY SCHOFIELD
vs.
THE UNITED STATES.
} No. ——.

Petition under the act of March 3, 1887, Chap. 359. Filed 20th August, 1887.

Amount prayed in petition, $25.00.
Final judgment.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

HENRY SCHOFIELD
vs.
THE UNITED STATES. } No. ——.

* * * * * * *

Therefore it is considered by the court here that the said plaintiff recover against the said defendant, as well the sum of *twenty-five* dollars for his damages, as the sum of two dollars and fifty-five cents, adjudged by the court here unto the said plaintiff, for his costs and charges in this behalf expended.

Memorandum.—Judgment was rendered in this case on the 6th October, 1887.

Application and notice of appeal to the Supreme Court of the United States by the United States, filed 16th January, 1888.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND,
DECEMBER TERM, 1887.

HENRY SCHOFIELD
vs.
THE UNITED STATES. } No. ——.

From the judgment rendered in the above-entitled cause, on the 6th October, 1887, in favor of the plaintiff, the defendants, by Thomas G. Hayes, United States district attorney, on the 16th day of January, 1888, make application for and gives notice of an appeal to the Supreme Court of the United States.

THOMAS G. HAYES.
U. S. District Attorney.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1888.

THE UNITED STATES, *Appellant*,
vs.
HENRY SCHOFIELD, *Appellee*. } No. 1,426.

MOTION TO DISMISS APPEAL.

The appellee moves to dismiss the appeal in the above-entitled cause for want of jurisdiction.

The facts, as shown by the accompanying extracts from the record, upon which the motion is based, are the following:

The final judgment of the District Court of the United States for the District of Maryland was entered for appellee on the 6th day of October, 1887, in the sum of twenty-five dollars and costs.

On the 16th day of January, 1888, an appeal was prayed by the appellant to the Supreme Court of the United States and allowed.

The transcript was filed in the clerk's office of this Court the 27th day of October, 1888.

BRIEF.

An appeal will not lie to this Court from a district court performing the appropriate duty of a district court.

The Sally *vs.* United States, 5 Cranch, 373.
Southwick *vs.* Postmaster General, 2 Pet., 442.

Under the Revised Statutes of the United States, section 691, as amended by the act of February 16, 1875, section 3, 18 Stat. at L., 316, this Court has not jurisdiction to re-examine judgments of circuit courts (or district courts) rendered since May 1, 1875, in such actions, unless the matter in dispute shall exceed the sum of $5,000, exclusive of all costs.

Thompson *vs.* Butler, 95 U. S., 694.

The United States are not entitled to a writ of error or appeal, if the same remedy would not be afforded under similar circumstances to a private party.

United States *vs.* Union Pacific R. R. Co., 105 U. S., 263.

Sections 2 and 9 of the act of March 3, 1887, 24 Stat. at L., 505, did not change existing law governing appeals to this Court.

CHARLES C. LANCASTER,
Counsel for Appellee.